IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/03/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.593 of 1996

1. Subramanian
2. Rajendran
3. Shunmugam
4. Ezilraju @ Marudai
5. Palsamy
6. Muthukaruppan @ Pichai
7. Murugaiah @ Kurugesan ... Appellants /
8. Palanivelu @ Velu. Accused 1 to 8

-Vs-

State by
Inspector of Police,
Viralimalai Police Station. ... Respondent.

Criminal Appeal against the judgment dated 02.08.1996 made in
S.C. No.42 of 1996 on the file of Additional Sessions Judge, Pudukkottai.

!For appellant : Mr.S. Shanmugavelayutham

^For respondent : Mr. A.N.Thambidurai,
Government Advocate.
(Crl. Side)

:J U D G M E N T

Accused 1 to 8 in S.C.No.42 of 1996 on the file of learned
Additional Sessions Judge, Pudukkottai are the Appellants. By the judgment dated 02.08.1996, the Appellants / Accused 1 to 8 were convicted for various offences and sentenced to undergo imprisonment.

2. Case of the prosecution could briefly be stated thus:- A.2 - Rajendran, A.3 - Shumugam and A.4 - Ezilraju are the sons of A.5 - Palsamy. A.6 - Muthukaruppan, A.7 - Murugaiah and A.8 - Palanivelu are brothers. P.W.1 - Duraikkannu is having a Tea Shop and Petty Shop in Othakkadai and residing in the same place.

3. Enmity. Both families of the Accused and P.W.1 are inimical towards each other due to 'Jallikkattu' (k";R tpul;L) function, which happened about twenty years ago. Further, there was also dispute with regard to enjoyment of the Well. A Criminal Case was also registered against the elder brother of P.W.1 and he was acquitted. About 17 years prior to the occurrence, a girl was taken away by the Accused party and the prosecution witnesses are inimical on that score also.

4. Occurrence. On 04.05.1993, Pidariamman Temple Festival was organised in Thulukkampatti, for which a Drama was arranged on the night of 04.05.1993. P.W.1's relative - deceased Periasamy, P.W.2 - Shanmugam, P.W.3 - Chelliah and P.W.4 - Palanisamy came to the house of P. W.1. In the night at about 8.30 p.m., they were all taking food inside the house of P.W.1. At that time, P.W.1's wife Palaniammal was looking after the Petty Shop. A.1 - Subramaniam came to the Shop for purchase of cigarette. Palaniammal had no change for the amount of Rs.10/-, which resulted in wordy quarrel between them. P.W.1 came out questioning the conduct of A.1 which resulted in wordy altercation between A.1 and P.W.1. On hearing the noise, P.Ws.2 to 4 and deceased Periasamy also came out. A.2 to A.4 armed with Aruval; A.6 to A.8 armed with Sticks came to the place. A.2 - Rajendran inflicted injury on P.W.1 - Duraikkannu. A.6 to A.8 had beaten P.W.1 with Sticks. A.3 - Shanmugam cut deceased Periasamy on his left and front head. A.1, A.5 and A.7 had beaten deceased Periasamy with Sticks and Spade Handle. A.4 - Ezilraju inflicted cut injuries on P.Ws.2 and 3. P.W.4 - Palanisamy was also beaten.

5. Treatment. Injured persons were sent to Manapparai Government Hospital. Since the condition of P.W.1 and Periasamy was serious, they were sent to Trichy for better treatment. In Manapparai Government Hospital, P.W.6 - Dr.Kalavalli treated P.Ws.4, 2, 1 and 3 and issued Exs.P.4 to P.7 - Accident Registers. On admission of the injured persons to the hospital, intimation was sent to the Police Station.

6. Registration of case. P.W.8 - Sub Inspector of Police, Viralimalai went to the Hospital at 11.45 p.m. on 04.05.1993. He examined P.W.1 and recorded his statement - Ex.P.1. On the basis of Ex.P.1 - Statement, a case was registered in Crime No.329 of 1993 under Ss.147, 148, 323, 324 and 307 I.P.C. under Ex.P.10 - First Information Report.

7. Investigation. On 05.05.1993 - 5.45 a.m., P.W.8 inspected the scene of occurrence - Othakadai in front of the Shop of P.W.1. Ex.P.2 -

Observation Mahazar, Ex.P.11 - Rough Plan were prepared on the scene of occurrence. P.W.8 went to Trichy Hospital and further examined the witnesses. Blood stained clothes of P.W.1 - M.Os.1 to 4 were recovered under Ex.P.3 - Seizure Mahazar.

8. Arrest of the Accused. On 06.05.1993 - 5.00 a.m., A.1 to A.8 were arrested near Mathoor Bus Stop. On being interrogated, A.3 - Shanmugam voluntarily confessed to his guilt. On the basis of his confession statement (Ex.P.12 - Admissible Portion), M.Os.8 to 10 were recovered under Ex.P.13 - Seizure Mahazar.

9. Counter case in Cr.No.332 of 1993. Arrested Accused were brought to the Police Station. A.1 - Subramaniam had given a Statement - Ex.P.14 to P.W.8 alleging that he (A.1), A.3, A.4 and A.5 were beaten by the Prosecution Witnesses. On the basis of Ex.P.14 - Statement, a case was registered in Crime No.332 of 1993 under Ss.324 and 323 I. P.C. under Ex.P.15 - First Information Report. Crime No.332 of 1993 was taken up for investigation simultaneously with Crime No.329 of 19 93. Accused 1 and 3 have already taken treatment themselves for the alleged injuries sustained by them in Keeranoor Hospital. Hence, they were not further sent to the Hospital.

10. Alteration of the First Information Report. Injured Periasamy succumbed to the injuries. Upon receipt of Death Intimation - Ex.P.16 , P.W.8 sent the case records to P.W.9 - Inspector of Police. On the basis of Ex.P.16 - Death Intimation, P.W.9 - I.O. altered the case under Sec.302 I.P.C. under Ex.P.17 - Express Report.

11. Inquest and further investigation. On 11.05.1993 - from 6.00 a.m. to 9.00 a.m., witnesses were examined in the presence of Panchayatdars and inquest was held on the body of deceased Periasamy. Ex.P.1 8 is the Inquest Report. After inquest, the body was sent for Autopsy.

12. Post-mortem. Pursuant to the requisition from the Inspector of Police, P.W.7 - Dr.Muthukumar had conducted Autopsy. He has noted contusion upon the left eye, left forearm, left upper arm and left thigh. Upon opening of the skull, P.W.7 noted 300 grams of clotted blood beneath and left temporal and parietal bone. Contusion of the brain was also noted. Opining that the deceased Periasamy died due to injury to vital organ - brain, P.W.7 issued Ex.P.9 - Post-mortem Certificate.

13. Seized Material objects were sent for Chemical Analysis. Upon completion of the investigation, P.W.10 - Inspector of Police laid Charge Sheet against Accused 1 to 8 on 30.09.1993. 14. To substantiate the Charges against the Accused, in the trial Court P.Ws.1 to 10 were examined. Exs.P.1 to P.21 were marked. M. Os.1 to 11 were produced.

Accused were questioned about the incriminating evidence and circumstances under Sec.313 Crl.P.C. A.1 filed statement in writing stating that he went to purchase Cigarette from the shop of P.W.1 and Palaniammal - the wife of P.W.1 demanded twice the amount, which resulted in wordy altercation. At that time, P.Ws.1 to 3 and deceased Periasamy came out of the house in an intoxicated mood. P.W.1 - Duraikkannu beat A.1 on his head. Upon hearing noise, the public came and along with them A.3 to A.6 also came. A.2, A.7 and A.8 had not come and not present during the occurrence. A.4 and A.6 were beaten by the prosecution witnesses. On seeing the same, Prosecution witnesses were beaten by the public, who gathered there.

15. Upon consideration of the evidence, the learned Sessions Judge found that there was no gathering of unlawful assembly with common object and thus found the Accused 1 to 8 to be responsible only for their individual acts and absolving them of the constructive liability. The Trial Court found the Accused 1 to 8 guilty for various offences interalia on the following findings--

(i) non-production of the materials and evidence to prove the motive would not affect the prosecution case;

(ii) there is consistent version of P.Ws.1 to 4 that A.1 to A.8 armed with Aruvals and Sticks and attacked on deceased Periasamy and P.Ws.1 to 4; slight inconsistencies in the overt act spoken by P.Ws.1 to 4 would not affect their reliability;

(iii) non-explanation of the simple injuries sustained by some of the Accused would not in any way affect the prosecution case.

On the above findings, the learned Sessions Judge convicted the Appellants / A.1 to A.8 for various offences and acquitted them under Ss.1 47 and 148 as noted below:-

Charge Number (1) Gist of the Offence (2) Against which accused (3) Finding (4) 1 Under Sec. 147 I.P.C. Rioting - Unlawful Assembly A1, A5 to A8 A1, A5 to A8 acquitted under Sec. 147 I.P.C. 2 Under Sec. 148 I.P.C. Rioting - Armed with deadly weapons A2 to A4 A2 to A4 acquitted under Sec.148 IPC. 3 Under Sec. 506(II) I.P.C. Threat of criminal intimidation A5

Acquitted 4 Under Sec. 324 I.P.C. for causing Injury to P.W.1 - Duraikannu A2 A2 convicted under Sec. 324 I.P.C. - R.I. for one year 5 Under Sec. 323 I.P.C. (2 counts) for causing injury to P.W.1 - Duraikannu and deceased

Periasamy A5 A5 convicted under Sec. 323 I.P.C.fine of Rs.500/- imposed. 6 Under Sec. 323 I.P.C. for causing injury to P.W.1 - Duraikannu A6, A8 A6, A8 convicted under Sec. 323 IPC fine of Rs.500/- imposed. 7 Under Sec. 323 I.P.C. for causing injury to deceased Periasamy A7 A7 convicted u/s 323 IPC(2 counts) Rs.500/- fine imposed. 8 Under Sec. 302 I.P.C. for causing death of Periasamy A3 A3 found not guilty under Sec. 302 IPC But convicted under Sec. 304 (II)I.P.C. and sentenced to undergo R.I. for five years

(1) (2) (3) (4) 9 Under Sec. 324 I.P.C. (3 counts) for causing injury to P.W.2 - Shanmugam, P.W.3 - Chellaya and P.W.4 - Palanisamy A4 A4 convicted under Sec. 324 I.P.C. (2 counts) and sentenced to undergo R.I. for six months for each count 10 Under Sec. 302 r/w 149 I.P.C. constructive liability for murder of Periasamy A1, A2, A4 to A8 A1, A2, A4 to A8 found not guilty and acquitted

16. Aggrieved over the conviction, the Appellants / A.1 to A.8 have preferred this appeal. The learned counsel for the Appellants / A.1 to A.8 assailed the prosecution case contending that by nonexplanation of injuries on the person of A.1, A.3 to A.6, the prosecution has not come forward with the true version and has suppressed the origin and genesis of the occurrence. Reliance is placed upon 2001 (1) MWN(Cr.) 140 in support of the contention that non-explanation of injuries on the person of the Accused would suggest the investigation perfunctory and that the prosecution has suppressed the true version. Drawing the attention of the Court to that portion of the evidence of the witnesses, the learned counsel contended that when the prosecution witnesses have not come forward to explain the injuries on some of the Accused, it undermines the veracity of the witnesses, which was not taken note of by the Trial Court. Referring the case in Crime No.33 2 of 1993 as 'Mistake of Fact' is assailed as totally erroneous and that no proper investigation was done in that case.

17. Countering the arguments of the Accused, learned Government Advocate had taken me through the evidence of P.W.1 - Duraikkannu and relevant documents and submitted that the overt act of all the Accused are consistently stated by P.Ws.1 to 4. It is further submitted that the evidence of P.Ws.1 to 4 is consistent with the medical evidence. Non-explanation of injuries on the person of the Accused would not in any way suggest suppression of origin and genesis of the occurrence. Submitting that the Statement of A.1 - Ex.P.14 before the Police and the Statement filed by him during the questioning under Sec.313 Crl.P.C. are not consistent, it is contended that in the light of inconsistent stand adopted by the Accused, the Investigating Officer has rightly referred the case as 'mistake of fact'. Supporting the findings of the Trial Court, the learned Government Advocate further submitted that the reasonings and findings for finding the Accused 1 to 8 guilty for various offences do not suffer from any infirmity warranting interference.

18. Upon careful analysis of the evidence, judgment of the

Trial Court and submissions of both sides, the following points arise for determination in this appeal:-

(i) Whether the prosecution has not come forward with the true version as contended by the defence ?

(ii) Whether the guilt of the Appellants / Accused 1 to 8 is proved beyond reasonable doubt and whether the Trial Court was right in convicting the Appellants / Accused 1 to 8 for various offences as noted above ?

(iii) Whether the conviction and sentence of imprisonment warrants any interference ?

19. Motive. P.W.1 - Duraikkannu and the family of the Appellants / Accused 1 to 8 are inimical for about twenty years. P.W.1 has stated about 'Jallikkattu' (k";R tpul;L), which happened about 20 years ago - prior to the occurrence. Likewise, the parties are inimical towards each other on account of enjoyment of the Well and also taking away of the girl about 17 years prior to the occurrence. Though P.W.1 has spoken about that aspect of motive, there is no other evidence strengthening his version. Adducing of evidence to prove the motive would only be the circumstance probablising the occurrence. Nonadducing of further materials strengthening the motive aspect would not in any way undermine the prosecution case.

20. When the case of the prosecution is based on the evidence of eye witnesses, the existence or non-existence of motive, sufficiency or insufficiency of motive would not play a major role. In this case, prosecution case is mainly based upon the evidence of eye witnesses viz. P.Ws.1 to 4. Hence, absence of proof of motive would not have any adverse effect on the prosecution case. This is all the more so, when P.Ws.1 to 4 are injured witnesses. Non-proof of motive would not render the version of P.Ws.1 to 4 untrustworthy.

21. Occurrence. Whatever be the previous enmity, that enmity was not the immediate cause for the occurrence on 04.05.1993. The Appellants / Accused 1 to 8 were not impelled by such previous enmity. The occurrence started on a trivial issue. In Thulukkampatti / Oththakkadai, the house of P.W.1 is on the Northern side of Viralimalai - Keeranur Road. On the front side are the Petty Shop and Tea Shop of P. W.1. Inner portion is residential house. In Thulukkampatti, on 04.05 .1993, Pidariamman Temple function was arranged. For celebrating the festival and also to see the drama, relatives of P.W.1 viz. deceased Periasamy, P.W.2 - Shunmugham, P.W.3 - Chelliah and P.W.4 - Palanisamy came to the house of P.W.1. They were all taking food inside the house. At about 8.30 p.m., P.W.1's wife Palaniammal was looking after the Shop. At that time, A.1 - Subramaniam came to the Shop for purchase

of Cigarette and there was no change for the amount of Rs.10/- tendered by A.1, which resulted in the wordy quarrel between Palaniammal and A.1. On hearing their noise, P.W.1 came out questioning A.1 and another and wordy altercation ensued between A.1 and P.W.1. Thus the occurrence developed due to this wordy altercation. Both parties aggressively came against each other and the people who gathered for festival added to the circumstance. 22. Upon hearing the noise, deceased Periasamy and P.Ws.1 to 4 came out of the house. A.2 to A.4 armed with Aruval and A.6 to A.8 armed with Sticks came and attacked P.Ws.1 to 4 and deceased Periasamy which could be detailed as under:Accused Injured witness Situs of Attack
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A.1, A.5, A.7 Deceased Periasamy Left arm, (Subramanian,
---------- left upper arm, Palsamy, with
stick and spade left thigh. Murugaiah) Handle.

A.2-Rajendran P.W.1 Duraikkannu Head,
---------- Parietal Region Aruval

A.3-Shumugam Deceased Periasamy Head cut
---------- left and front head with
Aruval.

A.4-Ezilraju P.W.2 Shunmugam Web Space
---------- Right Thumb and with Aruval
Index Finger.

A.4-Ezilraju P.W.3 Chelliah Left side forehead.
---------- with Aruval.

A.6 to A.8 P.W.1 Duraikkannu Left thigh, Muthukaruppan,
---------- left leg, Murugaiah, Fr;rp . fk;g[left
upper arm. Palanivelu 23. P.Ws.1 to 4 had consistently spoken about the presence of all the Accused and their overt act as noted above. Upon consideration of the evidence, the Trial Court found that there was no common object and the attack was due to sudden quarrel. In its view, it was an unpremeditated attack and that each one of the Accused is responsible for their individual acts. From the circumstances and the weapons used and the behaviour of the Accused, this Court differs from the view taken by the Trial Court that there was no unlawful assembly. The common object of the unlawful assembly could be developed instantaneously. All the Accused were armed with Aruvals and Sticks. They had the common intention of attacking Periasamy and the Prosecution Witnesses. Their common object is easily deductible from the

facts and circumstances and behaviour of the unlawful assembly. The learned Sessions Judge has not taken note of the behaviour of the unlawful assembly. In my view, the acquittal of the Appellants / Accused 1 to 8 under Charge Nos.1 and 2 for the offences under Ss.147 and 148 I.P.C. and A.1, A.2, A.4 to A.8 under Charge No.10 under Sec.302 r/w 149 I.P.C. is not correct. Since the State has not preferred any appeal against the acquittal, the matter is left at that point. Suffice to point out that the Appellants / Accused armed with deadly weapons had aggressively gathered against the prosecution witnesses.

24. During questioning under Sec.313 Crl.P.C., A.1 filed Statement in writing denying the origin of the occurrence. According to him, he went to purchase Cigarette from the Shop of P.W.1 and Palaniammal (wife of P.W.1) demanded twice the amount, which resulted in wordy altercation between them. At that time, P.Ws.1 to 3 and deceased Periasamy, who were in intoxicating mood, came out. P.W.1 beat him on his head. Upon hearing the noise, the public came. Along with them, A.3 to A.6 also came. In his Statement, A.1 denies the presence of A.2 , A.7 and A.8. Denial of presence of A.2, A.7 and A.8 does not merit acceptance in view of the definite evidence of P.Ws.1, 3 and 4. In his evidence, P.W.1 has clearly stated that he was beaten by A.6 to A.8 with Sticks and A.2 had inflicted cut injury with Aruval on the Parietal Region. Overt act of A.2 is also well spoken by P.Ws.3 and 4. When P.Ws.1, 3 and 4 have consistently spoken about the overt act of A.2 and A.6 to A.8, denial of presence of A.2, A.7 and A.8 lacks force.

25. Evidence of P.Ws.1 to 3 that they sustained injuries in the attack and the overt act of the individual Accused spoken by them is well corroborated by the medical evidence also.

----------Witness and wound | Injuries certificate (1) | (2) ---------- | P.W.1-Duraikannu | (i) Cut injury over parietal region ---------- | (ii) Abrasion over left thigh (Ex.P.6) | (iii) Abrasion over right leg | (iv) Contusion over left wrist | (v) Contusion over right upper arm | P.W.2 - Shanmugam | (i) Incised wound over web space --------- | thumb & index finger (R) hand (Ex.P.5) | (ii) Abrasion on (R) index finger | (iii)Contusion over (R) dorsum of | hand | (iv) Contusion (R) Parietal area | (v) Abrasion (L) forearm. |

P.W.3- Chelliah | (i) Lacerated wound over left side -------- | of the forehead. (Ex.P.7) | (ii) Abrasion over right big toe.

(1) (2)
---------- |
P.W.4 - Palanisamy | (i) Abrasion (L) forehead with ---------- |
contusion. (Ex.P.4) | (ii) Contusion (L) shoulder |
(iii) Stick mark (R) supra scapular | area
| (iv) Stick Mark (L) shoulder |
(v) Stick Mark over infrascapular | area.
| (vi) Stick Mark over (L) loin |
(vii) Abrasion on right back | (viii)
Abrasion on right thigh | (ix) Stick marked on
chest | anterior aspect.

26. P.Ws.1 to 4 are injured witnesses. Their evidence as to the overt act of the Appellants / Accused 1 to 8 is entitled to great weight and lends assurance to the factum of their presence at the time of occurrence. Very much cogent and convincing ground is essential to discard their testimony. The contention urged assailing the credibility of P.Ws.1 to 4 does not create any infirmity in their evidence.

27. Injuries on the Accused. As said earlier, A.1 to A.8 were arrested on 06.05.1993 - 5.00 a.m. near Mathoor Bus Stop. A.1 had given Ex.P.14 - Confession Statement alleging that he (A.1) and A.3 to A.6 have sustained injuries in the occurrence. On the basis of his statement, a case was registered in Crime No.332 of 1993 under Ss.324 and 323 I.P.C. (Ex.P.15 - First Information Report). In the statement of A.1 and Ex.P.15 - First Information Report, A.1 has alleged that P. W.1 - Duraikkannu has stated "c';fisj; jhd; ehDk; ghh;j;Jf; bfhz;L , Uf;fpnwd; ". By so saying, P.W.1 is alleged to have held A.1 by his shirt and A.1 ran to save himself and fainted on the way. A.2 to A.4 questioned P.W.1 and P.Ws.1 to 4 had beaten A.3 and A.4 and that they have taken treatment in Keeranoor Hospital. After investigation, case in Crime No.332 of 1993 was referred as 'Mistake of Fact'.

28. P.W.1 was questioned about their counter attack on the Appellants / Accused 1 to 8 and causing injuries to the Accused persons. It was also suggested to P.W.1 that P.Ws.1 to 4 and deceased Periasamy attacked the Accused party. As per the defence, deceased Periasamy cut A.4 and A.6 with Aruval. P.W.4 - Palanisamy and P.W.3 - Chelliah beat A.3 and A.5. Laying emphasis upon Ex.P.14 - Statement filed by A.1, prosecution case is attacked on the ground of suppression of injuries sustained by the Accused and thereby suppressing origin and genesis of the occurrence. Of course, when questioned about the attack on the Accused party, P.W.1 has denied any such attack and having caused injuries to the Accused party. Other witnesses have also denied having attacked the Accused party.

29. Can the prosecution case be doubted for such denial of any injuries sustained by the Accused ? is the short point posed for

consideration. Of their own, the Appellants / Accused 1 to 8 had stated that they have sustained injuries and they had already taken treatment themselves. The Appellants / Accused 1 to 8 had not produced any wound certificate. It is not known whether during the investigation in Crime No.332 of 1993, Accident Registers of the Accused were obtained or not. There is no material showing the nature of injuries sustained by the Accused. Mere non-explanation of the injuries on the person of the Accused by the prosecution would not ipso facto in all cases be termed as not representing the truthful version. The case of the prosecution cannot be doubted merely because the prosecution witnesses did not explain the injuries on the person of the Accused.

30. Non-explanation of injuries on the person of the Accused assumes greater significance only when the evidence consists of interested witnesses or where the defence version competes in probability with the prosecution case. It is to be seen whether the defence version set forth by A.1 competes in probability with the prosecution case. There is material variation between the defence version set forth in Ex.P.14 - Statement and the Statement filed by A.1 during questioning under Sec.313 Crl.P.C. As said earlier, according to A.1, after he was beaten by P.W.1, he fainted on the way and A.2 to A.6 came questioning prosecution witnesses, who were beaten by deceased Periasamy. Deceased Periasamy had cut A.4 and A.6 while P.Ws.4 and 3 had beaten A.3 and A.5. There is substantial variation in the statement filed by A.1 when questioned under Sec.313 Crl.P.C. In the written submission filed, it is alleged that the public, who gathered for " jpUtpHh" also came; along with them A.3 to A.6 also came. At the instance of P.W.1, prosecution witnesses have beaten A.3 and A.5. Deceased Periasamy had caused injuries to A.4 and A.6. According to the Accused, the public who gathered have beaten the prosecution witnesses. This defence that prosecution witnesses were beaten by the mob does not compete in probability with the prosecution case. In all reasonableness, it is expected of the Accused to explain the injuries on the person of P.Ws.1 to 4 and deceased Periasamy. The prosecution case revolves around the clear and cogent evidence of injured witnesses viz. P. Ws.1 to 4. In that circumstance, mere fact that the injuries on the person of Accused are not explained cannot be the sole basis for doubting the prosecution case.

31. In the case of Ebanesar & Anr.,etc. v. State by Inspector of Police, Panagudi P.S., Tirunelveli Kattabomman District, etc. (2001 (1) MWN (Cr.) 140) relied upon by the learned counsel for the Appellants / Accused, there was no investigation on the injuries sustained by the Accused. In that factual background, the Division Bench of this Court found that the prosecution has suppressed the origin and genesis of the occurrence and thereby giving benefit of doubt to the Accused. In the case in hand, P.W.8 - S.I. of Police had undertaken simultaneous investigation in Crime No.332 of 1993 - the case registered on the basis of statement recorded from A.1. After investigation that case was referred as 'Mistake of Fact'. Hence, the above decision cannot be made applicable to the case in hand.

32. From the evidence of P.Ws.1 to 4, it is clear that A.5 - Palsamy had uttered intimidating words " btl;of; bfhy;Y';flh ". A.3 had inflicted grievous cut injuries on deceased Periasamy on the left forearm, left upper arm and left thigh. There was fracture on right temporal and parietal bone, which has caused blood clots of 300 grams. Swelling and contusion of the brain were also noted. Death was due to the injuries sustained to the vital organ - Brain. A.3 is thus proved to be responsible for the death of Periasamy. The evidence of P.Ws.1 to 4 on the overt act of A.1 to A.8 is cogent and consistent. Case of the prosecution is further strengthened by the arrest of the Accused and recovery of M.Os.8 to 10 at the instance of A.2. The findings of guilt and conviction of the Accused for various offences are to be sustained. For the conviction of A.3 under Sec.304 (II) I.P.C., the Trial Court sentenced him to undergo Rigorous Imprisonment for five years. That sentence of imprisonment is neither harsh nor disproportionate warranting interference. This appeal has no merits and is bound to fail.

33. Therefore, the judgment of the Trial Court / learned Additional Sessions Judge, Pudukkottai in S.C.No.42 of 1996 (dated: 02.08.1996) convicting the Appellants / Accused 1 to 8 for various offences and the sentence of imprisonment and the quantum of time imposed upon them are confirmed and this appeal is dismissed. The Trial Court is directed to take immediate steps for securing the Accused to commit them to prison for serving the remaining period of sentence.

sbi
Index:Yes

Internet:Yes

To

1. The Additional Sessions Judge, Pudukkottai.

2. The Additional Sessions Judge, Pudukkottai, through

The Principal Sessions Judge, PUdukkottai.

3. The Superintendent, Central Prison, Trichy.

4. The Inspector of Police, Viralimalai Police Station, Pudukkottai.

5. The Public Prosecutor, High Court, Madras.